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AT SEATTLE
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WESTERN DISTRICT OF WASHINGTON
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UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT SEATTLE

IN RE: PHENYLPROPANOLAMINE
(PPA) PRODUCTS LIABILITY
LITIGATION,

MDL NO. 1407

This document relates to:

Miles, et al. v. Bayer Corp.,
et al., No. 03-225

ORDER DENYING DEFENDANT
METABOLIFE'S MOTION FOR
AN ORDER OF DISMISSAL
WITH PREJUDICE

This matter came before the Court on Defendant Metabolife International Inc.'s ("Metabolife") Motion for Dismissal with Prejudice. Metabolife asserts plaintiffs' failure to provide them with either a Plaintiffs' Fact Sheet or affirmation pursuant to Case Management Order ("CMO") Nos. 6, 13 and 13A. Defendant argues that, even if plaintiff had submitted these documents, CMO Nos. 13 and 13A provide for dismissal with prejudice against any defendant against whom ingestion of a PPA-containing product has not been alleged. Because Metabolife does not manufacture or distribute any PPA-containing product and plaintiff's complaint contains no allegation of ingestion of a PPA-containing product manufactured or distributed by Metabolife, defendant argues that

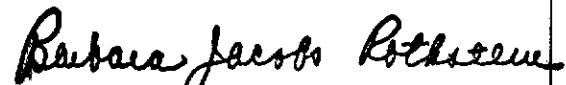


1 dismissal with prejudice of Metabolife is clearly required.

2 Plaintiffs' claims against Metabolife are not appropriate
3 for dismissal pursuant to CMO Nos. 6, 13 and 13A. The complaint
4 plainly states the products allegedly responsible for plaintiffs'
5 injuries and the manufacturers of those products. See Complaint
6 at 2-4. Plaintiffs' case was included in this multi-district
7 litigation because several of the products identified in the
8 complaint contain PPA. The complaint identifies an additional
9 product at issue as "Metabolife 356," an ephedra containing
10 product, and names defendant Metabolife as the manufacturer and
11 distributor of that product. Id. at 3-4. Plaintiffs assert that
12 both the PPA in the PPA-containing products identified and the
13 ephedra alkaloids in Metabolife 356 were proximate causes of the
14 injuries alleged, and that the parties have exchanged discovery
15 responses regarding these products. See Pls' Opp'n at 2-3.

16 For these reasons, the Court finds no basis for dismissal of
17 plaintiffs' claims against defendant Metabolife pursuant to CMO
18 Nos. 6, 13 and 13A. Accordingly, defendant Metabolife's motion
19 to dismiss is hereby DENIED.

20 DATED at Seattle, Washington this 14 day of OCTOBER, 2003.

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23 BARBARA JACOBS ROTHSTEIN
24 UNITED STATES DISTRICT JUDGE
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